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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 712

MARTIN MALINOU,
PUBLIC ADMINISTRATOR,
PETITIONER,

v.

GORDON CAIRNS,
RHODE ISLAND HOSPITAL TRUST
COMPANY, ET AL.,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF RHODE ISLAND

BRIEF FOR RESPONDENTS IN OPPOSITION

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Respondents pray that the petition for writ of certiorari to review the judgment of the Supreme Court of the State of Rhode Island in the case of *Martin Malinou, Public Administrator* v. *Gordon Cairns, Rhode Island Hospital Trust Company, et al.*, rendered on July 12, 1967, be denied.

Opinions Below

The opinion of the Rhode Island Supreme Court is unofficially reported in 231 A.2d 785 and is correctly set forth in the Petitioner's Brief for Certiorari, Appendix A. The other opinions below are substantially as indicated by the Petitioner in his Brief at 2.

Jurisdiction

The jurisdiction is set out in the Brief for Petitioner at 2.

Question Presented

Was the Supreme Court of Rhode Island correct in its decision to deny and dismiss the appeal made by the Public Administrator?

Statute Involved

The statute is entitled "*An Act providing for the appointment of a Public Administrator in the City of Providence.*" Rhode Island Acts and Resolves, 1876, Ch. 567 as amended by Rhode Island Public Laws 1950, Ch. 2596, Sec. 2. This statute is set out correctly and in its entirety as amended in Brief of Petitioner at 4-7.

Statement

The Respondent, Gordon Cairns of East Clifton, Quebec, Canada, a remote cousin of Dr. Ernest Valentine Beazley of Providence, Rhode Island, petitioned the Probate Court of the City of Providence on April 25, 1961, for the administration of Dr. Beazley's estate. Ernest Valentine Beazley had died on February 1, 1961. Gordon Cairns nominated

the Rhode Island Hospital Trust Company, a Rhode Island banking corporation, to the trust of administrator, and the latter was appointed by decree of the Probate Court dated May 26, 1961 (Ex. 16, Record, vol. 3, p. 141). Dr. Beazley died intestate leaving no widow or children. No next of kin were located in Rhode Island.

More than two weeks after the filing of the administration petition by Gordon Cairns, the Petitioner herein, Martin Malinou, the Public Administrator for the City of Providence, entered his appearance for the administration of the estate. The date of his entry of appearance was May 13, 1961 (Record, vol. 3, p. 135). The Public Administrator filed a claim of appeal from the Probate Court's decree on June 23, 1961.

The trial of the case occurred before a jury in the Rhode Island Superior Court March 2, 3, 4 and 8, 1966 (Record, vol. 3). The jury rendered a general verdict in favor of the respondents, Gordon Cairns and the Rhode Island Hospital Trust Company (Record, vol. 3, p. 196). The Superior Court denied the Public Administrator's motion for a directed verdict (Record, vol. 3, p. 197). Further, on July 7, 1966, the Public Administrator moved for a new trial which was denied (Record, vol. 3, pp. 229-232, 243).

The Petitioner appealed to the Supreme Court of Rhode Island and the opinion of that court was rendered on July 12, 1967, denying the Petitioner's appeal and affirming the judgment of the Superior Court. *Malinou* v. *Cairns,* R.I. 1967, 231 A.2d 785.

Argument

The Supreme Court of Rhode Island reached the correct decision on the facts of this case which involves a strictly local matter and is not a federal question warranting issuance of a writ of certiorari.

I

The United States Supreme Court should accept the construction placed upon Section 2 of the Public Administrator Act by the Supreme Court of Rhode Island.

The statute involved here is found in Rhode Island Acts and Resolves, 1876, Ch. 567 as amended by P.L. 1950, Ch. 2596, and it is set out in Petitioner's Brief pp. 4-7. The policy of the United States Supreme Court in a long line of cases has been to accept the construction of a state statute rendered by the state's highest court. *United States* v. *Burnison,* 339 U.S. 87, 70 S.Ct. 503, 94 L.Ed. 675 (1950), *Greenough* v. *Tax Assessors,* 331 U.S. 486, 67 S.Ct. 1400, 91 L.Ed. 1621 (1946), *Dorchy* v. *Kansas,* 272 U.S. 306, 47 S.Ct. 86, 71 L.Ed. 248 (1926), *Diaz* v. *Gonzalaz Y Lugo,* 261 U.S. 102, 43 S.Ct. 286, 67 L.Ed. 550 (1923). Section 2 of the Public Administrator Act has been interpreted by the highest court of Rhode Island on several occasions. *Malinou* v. *Rosedale,* 97 R.I. 277, 197 A.2d 289 (1964), *Malinou* v. *Mears,* 97 R.I. 15, 195 A.2d 232 (1963).

The statute obviously was designed to facilitate the handling of estates which might otherwise be neglected. *Malinou* v. *Cairns,* 231 A.2d 785, 786. Such neglect would create difficulties for creditors and a waste of assets which could otherwise be utilized for the commonweal.

II

The Public Administrator has no right to the administration of the Estate of Ernest Valentine Beazley; therefore the application of the statute as made does not deprive him of any property right in conflict with the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Any right in the Public Administrator to administer the estate must come to him by virtue of Section 2 of the

Public Administrator Act which specifically prescribes when the Public Administrator shall take out letters of administration. It reads:

> Such administrator shall take out letters of administration and faithfully administer upon the estate of any person who dies intestate within the city of Providence or elsewhere, leaving property in the said city to be administered and no administration having been granted or proceedings therefor pending, such person at the time of his decease not being an inhabitant or resident of any other town or city in this state, and not leaving a known husband, widow or next of kin within this state, which fact shall be established by proof satisfactory to the probate court of the city of Providence. Rhode Island Acts and Resolves, 1876, Ch. 567, Sec. 2 amended by P.L. 1950, Ch. 2596.

The Rhode Island Supreme Court in *Malinou* v. *Rosedale,* 97 R.I. 277, 280, 197 A.2d 289, 291 (1964) reaffirmed its earlier construction of this section by holding that:

> [T]he legislature intended . . . to confer an interest or right in an estate upon the public administrator only where the three conditions prescribed therein concurred, "namely, intestacy, an absence of known next of kin, *and no prior pending proceedings for administration.*" *Malinou* v. *Mears,* 97 R.I. 15, 16, 195 A.2d 232, 233. (Emphasis added)

The three conditions set out here are in the conjunctive and it is incumbent upon the Public Administrator to show that all three existed.

In the case presently before the court it becomes apparent after checking the filing dates in the Probate Court that *administration proceedings were pending* when the Public Administrator entered his appearance. So obvious are the facts that the Supreme Court stated in its opinion below:

> Here the record is clear and undisputed that at the time appellant appeared in probate court, appellee Cairns' petition for the appointment of the Hospital Trust as administrator was then and there pending. This fact in and of itself, in our opinion, prevents appellant from exercising the duties of his office.
>
> . . . The general assembly, when it promulgated this condition, demonstrated an unmistakable intent that it did not desire the public administrator, whoever he may be, to be an intermeddler or engage in active competition with others for the appointment as the administrator of an estate which satisfies the other requirements of P.L. 1876, Chap. 567, sec. 2 as amended. *Malinou* v. *Cairns*, 231 A.2d 785, 787.

In order to attempt to show a violation of the Fourteenth Amendment, the Petitioner must first be possessed of a property right. The right he has is his only by grace of legislative enactment which in this case is clear upon its face and in and of itself does not violate any constitutionally protected right of the Petitioner or the people of the City of Providence.

III

The Rhode Island Supreme Court did not err by refusing to review the Petitioner's contention that the Respondent Cairns is not the next of kin of decedent.

In his Brief pp. 17-18 the Petitioner urges upon this court a peculiar construction of the Rhode Island court's opinion. He claims that the *sine qua non* of the rationale of that opinion is that Respondent Cairns is next of kin of decedent. The court makes no such determination, nor is any such determination intimated. The court has merely looked at the statute and the prior cases and said that there must be no prior pending proceedings in the probate court if the public administrator is to exercise his function. There is no justification for the Petitioner's fictitious distinction between the "apparent" and "real" rationale of the opinion. Petitioner's Brief at 18. There is only one rationale.

Again the Public Administrator Act does not say that there be no prior pending proceedings *by next of kin;* it says only "no administration having been granted or proceedings therefor pending."

It should be noted here that administration only is the issue, not distribution of the estate. The state provides other machinery for the protection of a person's property after death and such is not the function of the public administrator's office.

In his Brief p. 22, the Petitioner suggests that the Rhode Island Supreme Court sitting in 1962 took a different view of this case than did the present court. This is not so. In 1962 the case of *Malinou* v. *Cairns,* 94 R.I. 279, 180 A.2d 446, was before that court on a writ of certiorari to determine if the Superior Court had erred in its decision denying the Public Administrator's motion to vacate an *ex parte* order for a *dedimus potestatem* to

take depositions outside the state. The court in that case denied and dismissed the petition for certiorari and quashed the writ already issued. That court never dealt with the Petitioner's right to contest the claim to heirship, The Petitioner was told only that if there were errors in his case, a bill of exceptions would be his proper remedy at the proper time.

Conclusion

For the foregoing reasons the Respondents respectfully request that the court deny the petition for a writ of certiorari to the Supreme Court of Rhode Island.

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